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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,702	07/02/2001	Benjamin W. Slivka	3382-59319	4420

7590

12/16/2002

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EXAMINER

HARRELL, ROBERT B

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 12/16/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

22

Office Action Summary

Application No.

09/898,702

Applicant(s)

SLIVKA ET AL.

Examiner

Harrell, Robert B.

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/27/02 et al. .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-35 and 37-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-35 and 37-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-4,6,7 .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See attached office action* .

Serial Number: 09/898,702
Art Unit : 2142

1. Claims 28-35 and 37-55 remain for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

4. Claims 28-35 and 37-55 are rejected under 35 U.S.C. 102 (e) as being anticipated by Fawcett (5,845,077).

5. Per claim 53, Fawcett anticipated a computer-readable medium containing the applicant's invention as currently claimed since those skilled in the art knew that computer software (eg., see Abstract first four words) was stored (locally or at a host site's main storage as in figure 2 (42)) and/or transported (eg., CD ROM) on computer-readable medium if not at least the storage in the computers memory such that the software could be executed and such storage in and of itself was a computer-readable storage medium. Also, Fawcett taught a distribution file (computer

Serial Number: 09/898,702
Art Unit : 2142

software) for distribution and installing software on a computer (user computers of figure 2), the distribution file comprising:

- a) software installable at the computer (any operating system such as Windows95 (R) in col. 6 (lines 40-49)),
- b) an installer co-resident in the distribution file with the software, the installer operable to install the software (eg., see col. 8 (lines 40-63) and/or col. 9 (lines 59-63));
- c) an extractor co-resident in the distribution file with the software, the extractor operable to extract the software from the distribution file and automatically invoked upon execution of the distribution file (since "bulletin board systems" (BBSs) were referenced in col. 2 (lines 10-11) and "modem" in col 2 (line 27) data compression was inherently known to have been implemented to reduce storage and bandwidth; thus, such extractors were required to "decompress" the file for "immediate installation" (col. 8 (line 49)); OR, the "installation application" of col. 9 (lines 51-55));
- d) installer starting instructions arranged within the distribution file to be automatically executed upon completion of extraction of the software, the installer starting instructions operable to start the installer to install the software (eg., see col. 8 (lines 40-63)).

Serial Number: 09/898,702
Art Unit : 2142

6. Per the other claims (28-35, 37-52, 54 and 55) they do not teach or define above the corresponding claims, save for the reasons given bellow, and are thus rejected for the reasons given above.

7. Per claims, such as, 28 and 29, the file was stored at a location referenced and accessible to the remote computer (user computer) via a computer network (eg., see col. 4 (line 34), col. 5 (lines 2-28), and col. 8 (lines 17-25)).

8. Per claims, such as, 40 and 41, see col. 10 (line 18).


9. Per claims, such as, 42-44, see col. 8 (lines 26-58) in that backups (col. 8 (line 34)) are required since files are modified "updated" or removed "deleted". Also, changing a file with a new file effectively deletes the old file if the two have the same name.

10. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (703) 305-9692. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

12. The fax phone numbers for the Group are (703) 746-7238 for After-Final, (703) 746-7239 for Official Papers, and (703) 746-7240 for Non-Official and Draft papers.

13. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.


ROBERT B. HARRELL
PRIMARY EXAMINER